

WC 10-139

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READ INSTRUCTIONS CAREFULLY  
BEFORE PROCEEDING

FEDERAL COMMUNICATIONS COMMISSION  
REMITTANCE ADVICE  
FORM 159

PLEASE STAMP  
AND RETURN  
THIS COPY TO

Approved by OMB  
1/15/89  
Page 30 of 2

FLETCHER HEALD & HILDRETH

(1) LOCKBOX # 979091		SPECIAL USE ONLY	
FCC USE ONLY			
SECTION A - PAYER INFORMATION			
(2) PAYER NAME (if paying by credit card enter name exactly as it appears on the card) Thomas J Dougherty		(3) TOTAL AMOUNT PAID (U.S. Dollars and cents) \$1,015.00	
(4) STREET ADDRESS LINE NO 1 900 N Stuart St			
(5) STREET ADDRESS LINE NO 2 Apt. 1801			
(6) CITY Arlington, VA 22203		(7) STATE VA	(8) ZIP CODE 22203
(9) DAYTIME TELEPHONE NUMBER (include area code) 202-714-7024		(10) COUNTRY CODE (if not in U.S.A.)	
FCC REGISTRATION NUMBER (FRN) REQUIRED			
(11) PAYER (FRN) 0008952467		(12) FCC USE ONLY	
IF MORE THAN ONE APPLICANT, USE CONTINUATION SHEETS (FORM 159-C) COMPLETE SECTION BELOW FOR EACH SERVICE, IF MORE BOXES ARE NEEDED, USE CONTINUATION SHEET			
(13) APPLICANT NAME DukeNet Communications, LLC			
(14) STREET ADDRESS LINE NO 1 400 South Tyron Street			
(15) STREET ADDRESS LINE NO 2			
(16) CITY Charlotte		(17) STATE NC	(18) ZIP CODE 28202
(19) DAYTIME TELEPHONE NUMBER (include area code) 704-3828104		(20) COUNTRY CODE (if not in U.S.A.)	
FCC REGISTRATION NUMBER (FRN) REQUIRED			
(21) APPLICANT (FRN) 0007736853		(22) FCC USE ONLY	
COMPLETE SECTION C FOR EACH SERVICE, IF MORE BOXES ARE NEEDED, USE CONTINUATION SHEET			
(23A) CALL SIGN/OTHER ID	(24A) PAYMENT TYPE CODE CUT	(25A) QUANTITY 1	
(26A) FEE DUE FOR (PTC) \$1,015.00	(27A) TOTAL FEE \$1,015.00	FCC USE ONLY	
(28A) FCC CODE 1		(29A) FCC CODE 2	
(23B) CALL SIGN/OTHER ID	(24B) PAYMENT TYPE CODE	(25B) QUANTITY	
(26B) FEE DUE FOR (PTC)	(27B) TOTAL FEE	FCC USE ONLY	
(28B) FCC CODE 1		(29B) FCC CODE 2	
SECTION D - CERTIFICATION			
CERTIFICATION STATEMENT I, <u>Thomas J Dougherty</u> , certify under penalty of perjury that the foregoing and supporting information is true and correct to the best of my knowledge, information and belief.			
SIGNATURE <u>[Signature]</u>		DATE <u>7/8/10</u>	
SECTION E - CREDIT CARD PAYMENT INFORMATION			
MASTERCARD <input type="checkbox"/> VISA <input checked="" type="checkbox"/> AMEX <input type="checkbox"/> DISCOVER <input type="checkbox"/>			
ACCOUNT NUMBER <u>[REDACTED]</u>		EXPIRATION DATE <u>1/12</u>	
I hereby authorize the FCC to charge my credit card for the service(s) authorization herein described.			
SIGNATURE <u>[Signature]</u>		DATE <u>7/8/10</u>	

SEE PUBLIC BURDEN ON REVERSE

FCC FORM 159

FEBRUARY 2003

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\* NOT ADMITTED IN VIRGINIA

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WRITER'S DIRECT

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July 8, 2010

Federal Communications Commission  
Wireline Competition Bureau Applications  
P.O. Box 979091  
St. Louis, MO 63197-9000

Re: Application Under Section 214 of the Communications Act  
of 1934, as Amended, for Authorization to Assignment of  
Certificate

Dear Madam/Sir:

Transmitted under cover of this letter are an original and four copies of the above-referenced application. This is a filing requiring a fee. The attached Form 159 provides information required to obtain payment of that fee.

Also enclosed is our file copy of this application. It is marked "Stamp and Return." Please place your receipt stamp on this copy and return it in the postage paid, and addressed, envelope enclosed with this filing.

Please direct any questions or further correspondence regarding this matter to the undersigned.

Respectfully submitted,



Thomas J. Dougherty, Jr.  
Counsel for  
DukeNet Communications, LLC

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

<b>In the Matter of</b>	)	
	)	
	)	
	)	
<b>DukeNet Communications, LLC,</b>	)	<b>WC Docket No. _____</b>
Assignor	)	
	)	
<b>AND</b>	)	<b>IB File No. _____</b>
	)	
<b>DukeNet OpCo, LLC</b>	)	
Assignee	)	
	)	
<b>Application for Consent to Transfer Assets</b>	)	
<b>and Customers</b>	)	
<b>Pursuant to Section 214 of the</b>	)	
<b>Communications Act of 1934, as Amended</b>	)	

**Application**

DukeNet Communications, LLC (“DukeNet” or “Assignor”) and DukeNet OpCo, LLC (“OpCo” or “Assignee”) (collectively, “Applicants”) hereby request authority pursuant to Section 214 of the Communications Act of 1934, as amended, 47 U.S.C. § 214 (the “Act”), and Sections 63.03 and 63.04(a) of the Commission’s Rules, 47 CFR §§ 63.03 and 63.04(a), to consummate a transaction whereby the assets and customers of DukeNet will be assigned to OpCo. As further described below, the proposed transaction is entitled to streamlined treatment under Section 63.03(b)(2)(i) of the Commission’s Rules.

***I. SUMMARY DESCRIPTION OF PROPOSED TRANSACTION***

The Assignor, DukeNet, is a nondominant domestic telecommunications carrier. DukeNet is authorized to provide competitive local exchange and interexchange telecommunications services in North Carolina, South Carolina, Georgia, Virginia, Florida,

Tennessee and Alabama. Since 1994, DukeNet has developed and managed fiber optic and microwave systems for wireless, local and long-distance communications companies, Internet service providers and other businesses and organizations. DukeNet's network currently includes approximately 4,300 miles of fiber optic cable. Approximately 26 percent of those route miles are leased from affiliates. DukeNet's business includes providing transport for interexchange carriers, CLECs and enterprise customers, as well as wireless backhaul. DukeNet does not offer switched voice or other services to residential end users.

The Assignee, OpCo, is a new company having no prior operations or assets.

This assignment of assets and customers will occur as a part of, and as the outcome of, a reorganization incident to an investment in this communications business by Alinda Telecom Investor I, L.P. ("Alinda I") and Alinda Telecom Investor II, L.P. ("Alinda II" and, together with Alinda I, "Investor"). As described in detail below, and pursuant to the terms of the Formation and Sale Agreement ("Agreement") dated June 23, 2010 between DukeNet's direct parent, Duke Energy Services, Inc., and Investor, Investor will invest in the DukeNet business through a joint venture transaction. In this transaction, DukeNet will be merged into OpCo, and OpCo will be the surviving entity, holding all assets and customers previously held by DukeNet. As a result of the proposed transaction, both Duke Energy and Investor will own indirectly fifty percent of the equity interests in OpCo, which will operate as a joint venture under the name DukeNet Communications, LLC. It is contemplated that the management team and other employees of DukeNet will remain in place after the proposed transaction. The transaction will be transparent to DukeNet's customers. As a result of the merger all current customers of DukeNet will continue to be served by OpCo. The proposed transaction will not result in any loss or impairment of service for any customers. Following the transaction, DukeNet customers will

receive their existing services at the same rates, terms and conditions as at present. Any future changes in the rates, terms and conditions of service will be made pursuant to Commission and applicable state law requirements. All affected customers will continue to see "DukeNet Communications, LLC" on their invoices. The only significant change that will take place following the closing of the transaction from the customer's perspective is that their service provider will ultimately be owned by Duke Energy and Investor.

## ***II. ADDITIONAL INFORMATION REQUIRED BY SECTION 63.04***

In support of this application, Applicants submit the following information:

### **1. Applicant Information**

#### **Applicants' Addresses, Telephone Numbers and Federal Regulatory Numbers ("FRN")**

##### **DukeNet Communications, LLC**

400 South Tryon Street  
Charlotte, North Carolina 28202-1904  
Telephone: (704) 382-8104  
FRN: 0007736853

##### **DukeNet OpCo, LLC**

400 South Tryon Street  
Charlotte, North Carolina 28202-1904  
Telephone: (704) 382-8104  
FRN: Will be provided as a supplement to this application  
upon issuance.

### **2. States of Organization**

**DukeNet:** DukeNet is a limited liability company organized under the laws of the State of Delaware.

**OpCo:** OpCo is a limited liability company organized under the laws of the State of Delaware.

**3. Correspondence Concerning This Application Should Be Sent To:**

Thomas J. Dougherty, Jr.  
FLETCHER, HEALD & HILDRETH, P.L.C.  
1300 North 17th Street, 11th Floor  
Arlington, Virginia 22209  
Telephone: 703-812-0409  
dougherty@fhhlaw.com

and to

Philip L. Malet and  
Christopher Bjornson  
Steptoe & Johnson LLP  
1330 Connecticut Ave., N.W.  
Washington, D.C. 20036  
202-429-3000 (phone)  
202-429-3902 (fax)  
pmalet@steptoe.com  
cbjornson@steptoe.com

**4. Ownership of Applicants**

**A. DukeNet Communications, LLC**

DukeNet is a wholly-owned subsidiary of Duke Energy Services, Inc., a Delaware corporation ("DES"), which, in turn, is an indirect wholly-owned subsidiary of Duke Energy Corp., a Delaware corporation ("Duke Energy"). No one person or entity directly or indirectly owns ten percent or more of the equity of Duke Energy. Duke Energy, through its various affiliates, is one of the largest electric power companies in the United States, supplying and delivering energy to approximately 4 million U.S. customers. It has approximately 35,000 megawatts of electric generation capacity in the Carolinas and Midwest, and natural gas distribution services in Ohio and Kentucky. In addition, Duke Energy owns and operates a portfolio of renewable energy assets.

**B. DukeNet OpCo, LLC ("OpCo")**

OpCo is a limited liability company organized under the laws of the State of Delaware and is a wholly owned, direct subsidiary of DukeNet Communications Holdings, LLC ("HoldCo"). HoldCo is a limited liability company organized under the laws of the State of Delaware and is a wholly owned, direct subsidiary of DukeNet VentureCo, Inc. ("Seller"). Seller is a corporation organized under the laws of the State of Delaware and is a wholly owned, direct subsidiary of DES. After the transaction, Investor will hold a fifty percent (50%) indirect equity interest in OpCo, as described below.

Alinda I will hold a 29.6% direct interest in HoldCo and a 29.6% indirect interest in OpCo. Alinda I's ultimate parent is Alinda Infrastructure Fund II, L.P., a limited partnership organized under the laws of Delaware. Alinda I's General Partner is Alinda Telecom I GP LLC, a limited liability company organized under the laws of Delaware.

Alinda II will hold a 20.4% direct interest in HoldCo and a 20.4% indirect interest in OpCo. Alinda II's ultimate parent is Alinda Infrastructure Parallel Fund II, L.P., a limited partnership organized under the laws of the Cayman Islands. Alinda II's General Partner is Alinda Telecom II GP LLC, a limited liability company organized under the laws of Delaware.

**5. Anti-Drug Abuse Act Certification**

No party to this application is subject to a denial of Federal benefits pursuant to section 5301 of the Anti-Drug Abuse Act of 1988.

**6. Description of the Transaction**

As part of its efforts to expand the telecommunications business conducted by DukeNet, on June 23, 2010 DES signed a definitive agreement with Investor, pursuant to which Investor will invest in the DukeNet business through a joint venture transaction. To facilitate its ability to

establish a joint venture for DukeNet's telecommunications business that can be treated as a partnership for federal tax purposes, Duke Energy intends to reorganize the DukeNet business prior to the consummation of the joint venture transaction. To effect the reorganization, the following steps have or will occur: (i) DES formed Seller, as a wholly owned direct subsidiary of DES; (ii) Seller formed HoldCo, as a wholly owned direct subsidiary of Seller; (iii) HoldCo formed OpCo, as a wholly owned direct subsidiary of HoldCo; and (iv) DukeNet will merge with and into OpCo, with OpCo as the surviving entity operating under the legal name DukeNet Communications, LLC.

After the reorganization Seller will sell fifty percent of the equity interests in HoldCo to Investor for a cash payment equal to the fair market value of such interests. After the consummation of the transaction, each of Duke Energy and Investor will own indirectly fifty percent of the equity interests in OpCo, which will operate as a joint venture under the name DukeNet Communications, LLC. At the closing, OpCo will enter into services agreements with certain Duke Energy affiliates, pursuant to which such Duke Energy affiliates will provide certain administrative, support and transition services to OpCo. It is anticipated that the management team and other employees of DukeNet will remain in place after the proposed transaction. A diagram showing the current and post-transaction structure of Applicants is attached as Exhibit A.

## **7. Qualifications for Streamlined Treatment**

The Applicants respectfully request streamlined treatment of this Application pursuant to Section 63.03 of the Commission's rules, 47 C.F.R. § 63.03. This Application is eligible for streamlined processing pursuant to Section 63.03(b)(2)(i) of the Commission's Rules, 47 C.F.R. § 63.03(b)(2)(i), because (a) after the proposed transaction, OpCo (including its affiliates) will



have a market share in the interstate, interexchange market of substantially less than 10 percent, and will provide competitive services exclusively in areas served by a dominant local carrier not a party to the transaction, and (b) the Applicants (including their affiliates) are not currently dominant with respect to any domestic service, and will not become dominant with respect to any domestic service after consummation of the proposed transaction. The Applicants respectfully request approval of this Application as soon as possible.

**8. Related Commission Applications and Separately filed Waiver Requests**

There are no other Commission applications related to the transaction nor are there any separately filed waiver requests being sought in conjunction with the transaction.

**9. Special Consideration**

None of the Applicants are requesting special consideration resulting from imminent business failure.

**10. Related Commission Applications and Separately filed Waiver Requests**

There are no other Commission applications related to the transaction nor are there any separately filed waiver requests being sought in conjunction with the transaction.

**11. Public Interest Statement**

The proposed transaction will serve the public interest. The transaction will be transparent to customers and at the time of the merger they will not experience any change in their services, rates, terms or conditions of such service, or in the name of their service provider. Any future change in rates, terms and conditions of service will be made in accordance with applicable Commission and state requirements. The only significant change following the closing of the transaction will be that Duke Energy and Investor will jointly be the ultimate parents of OpCo. This joint ownership will infuse OpCo with additional capital allowing OpCo

to continue offering high quality service and to best compete within the telecommunications market.

To ensure a seamless transition and avoid customer confusion or inconvenience, DukeNet will provide written notice to the affected customers explaining the change in service provider. A draft of the notification letter that will be sent to affected customers is appended hereto as **Exhibit B.**

*Remainder of page intentionally left blank.*

### **III. CONCLUSION**

Based on the foregoing, the Applicants respectfully submit that the public interest, convenience, and necessity would be furthered by grant of this Application.

Respectfully submitted,



Thomas J. Dougherty, Jr.  
FLETCHER, HEALD & HILDRETH, P.L.C.  
1300 North 17th Street, 11th Floor  
Arlington, Virginia 22209  
Telephone: 703-812-0409  
dougherty@fhhlaw.com

*Counsel for DukeNet  
Communications, LLC and DukeNet  
OpCo, LLC*

and

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139 East Fourth Street  
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pmalet@steptoe.com  
cbjornson@steptoe.com

*Counsel for Investor*

July 6, 2010

**EXHIBIT LIST**

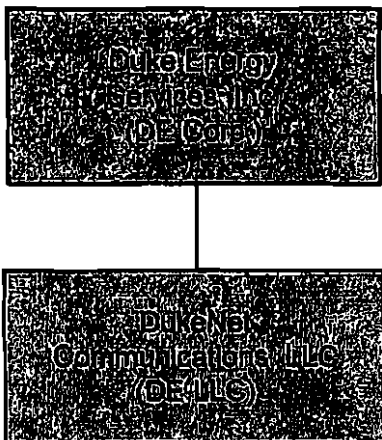
<b>EXHIBIT A</b>	<b>Diagram of Current and Post-Transaction Applicant Structure</b>
<b>EXHIBIT B</b>	<b>Customer Notification Letter</b>

## **EXHIBIT A**

### **Diagram of Current and Post-Transaction Applicant Structure**

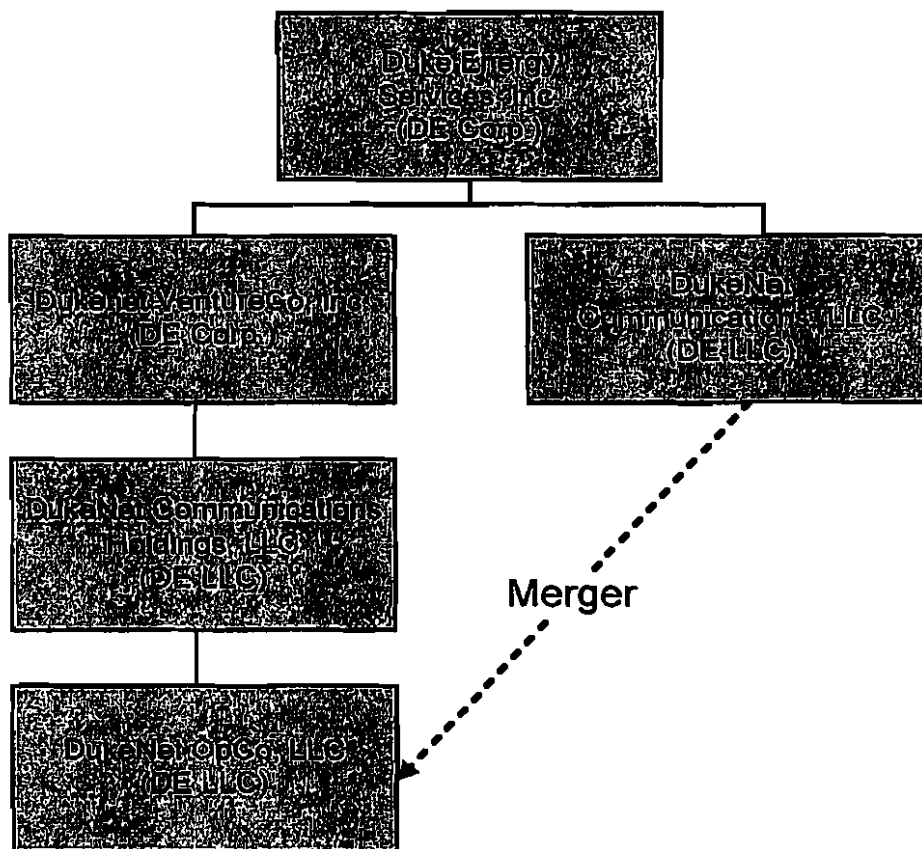
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Current structure:



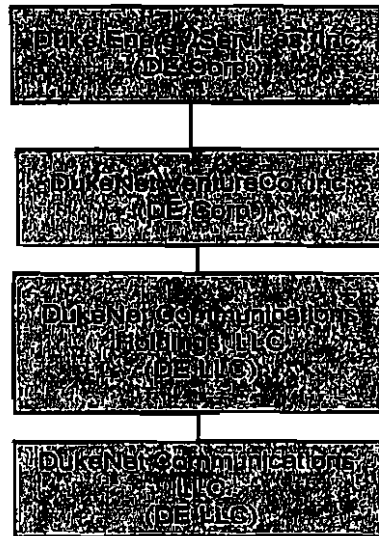
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Internal reorganization:



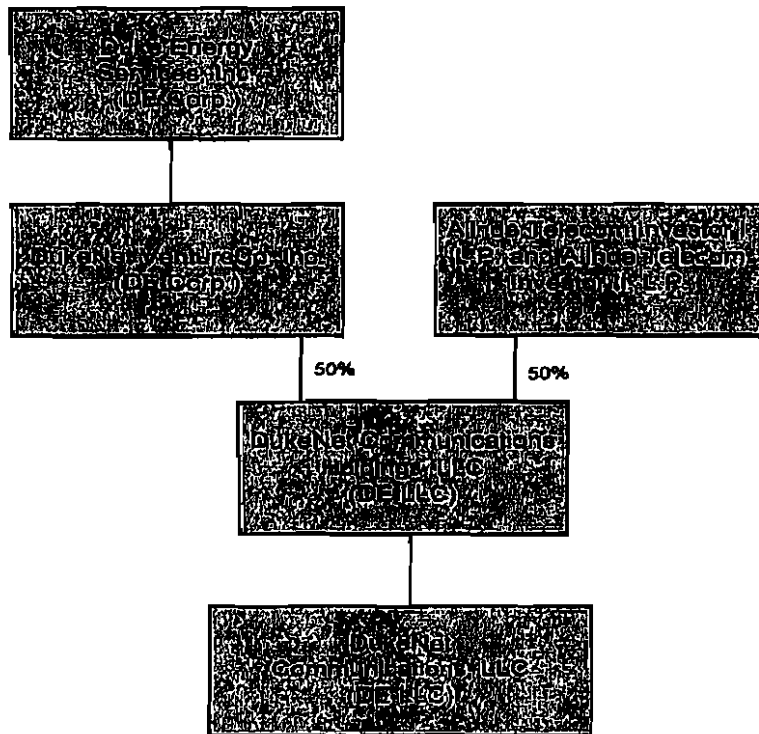
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Structure after internal reorganization:



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Post-transaction structure after sale of 50 percent of the equity interests in HoldCo to Investor:



**EXHIBIT B.**

**Customer Notification Letter**



**[DukeNet Communications, LLC Letterhead]**

July [•], 2010

**IMPORTANT NOTICE REGARDING YOUR SERVICES FROM  
DUKENET COMMUNICATIONS, LLC**

Dear DukeNet Communications Customer,

As part of an effort to expand DukeNet Communications, LLC's ("DukeNet") telecommunications business, DukeNet's ultimate parent company, Duke Energy Corporation ("Duke Energy"), is entering a joint venture transaction with Alinda Capital Partners LLC affiliates Alinda Telecom Investor I, L.P. ("Alinda I") and Alinda Telecom Investor II, L.P. ("Alinda II" and, together with Alinda I, "Alinda"). To facilitate this transaction, Duke Energy intends to reorganize the DukeNet business by merging DukeNet into a new operating company that will do business as DukeNet Communications, LLC ("new DukeNet"). The only significant change following the close of the transaction is that Duke Energy and Alinda will be the ultimate owners of new DukeNet. As an existing DukeNet customer, you will see no change as a result of this transaction.

You will continue to receive the same services you currently do and, of course, there will be no fees or charges to you in connection with this transfer and there will be no disruption in service. As a DukeNet customer, you will continue to receive services at the same rates, terms and conditions specified in your existing contract with DukeNet.

DukeNet anticipates the date of the transaction closing will be on or about September 30, 2010, provided all necessary regulatory approvals have been obtained. At that time, the name of your service provider will remain DukeNet Communications, LLC.

If you have any questions, please contact \_\_\_\_\_. For all questions regarding billing, service needs or complaints, please contact DukeNet at 1-800-754-7730.

We look forward to continuing to provide service to you.

Cordially,

DukeNet Communications, LLC

### DECLARATION

I, Dorothy K. Corbett, Esq. am Associate General Counsel of Duke Energy Corp. I am authorized to represent it and its affiliates and to make this verification on their behalf. The statements in the foregoing document relating to Duke Energy Corp. and its affiliates, except as otherwise specifically attributed, are true and correct to the best of my knowledge and belief.

I declare under penalty of perjury that the foregoing is true and correct this 6 day of July, 2010 in Cincinnati, Ohio.

  
\_\_\_\_\_  
Dorothy K. Corbett, Esq.

# DECLARATION

I, Christopher W. Beale, am President of Alinda Telecom I GP LLC and Alinda Telecom II GP LLC. I am authorized to represent them and their affiliates and to make this verification on their behalf. The statements in the foregoing document relating to Investor and its affiliates, except as otherwise specifically attributed, are true and correct to the best of my knowledge and belief.

I declare under penalty of perjury that the foregoing is true and correct this 6<sup>th</sup> day of July, 2010, in New York, New York.



Christopher W. Beale